# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

AUGUST WEGE	
Claimant	
VS.	
ý	Docket No. 250,581
KOCH TRUCK LINE	
Respondent	
AND	
AMERICAN INTERSTATE INSURANCE	
COMPANY	
Insurance Carrier	

#### ORDER

Respondent appeals the March 9, 2000, preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was awarded temporary total disability compensation effective November 18, 1999, until certified as having reached maximum medical improvement or released to substantial and gainful employment.

#### Issues

Did the Administrative Law Judge exceed his jurisdiction in awarding claimant temporary total disability benefits effective November 18, 1999?

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

At preliminary hearing, it was agreed that claimant's entitlement to temporary total disability compensation beginning November 18, 1999, was the only issue for consideration by the Administrative Law Judge. The dispute centered around whether claimant walked off the job on that date or whether he was being required to perform work which was outside his restrictions, forcing him to leave work. The Administrative Law Judge, apparently deciding the dispute in favor of the claimant, awarded temporary total disability benefits.

Respondent contends the Administrative Law Judge exceeded his authority in awarding temporary total disability compensation, citing K.S.A. 1999 Supp. 44-551. Respondent also argues that there is a presumption against disability whenever an

employee can work and refuses to do so, citing Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995), and Swickard v. Meadowbrook Manor, 26 Kan. App. 2d 144, 979 P.2d 1256 (1999), where the court found that an employee was required to make an affirmative effort to fill an offered accommodated job. In both Foulk and Swickard, the matter had gone to regular hearing before being appealed regarding a claimant's entitlement to temporary total disability benefits.

In this instance, the matter is on appeal from a preliminary hearing.

K.S.A. 1999 Supp. 44-551(b) provides that the Appeals Board shall not review a pending preliminary hearing order entered by an administrative law judge unless it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested. K.S.A. 1999 Supp. 44-534a provides certain issues which shall be considered jurisdictional and subject to review by the Appeals Board, including:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

K.S.A. 1999 Supp. 44-534a also grants the administrative law judge the authority to award or deny temporary total disability compensation from a preliminary hearing, pending a full hearing on the claim.

Respondent argues in its brief that "the Board has a policy against reviewing preliminary decisions of ALJs . . . . "

The Board has no policy against reviewing preliminary decisions of administrative law judges. The Board's authority to review administrative law judges' preliminary decisions is controlled by statute. The legislature has mandated that the Appeals Board will not consider issues dealing with a claimant's entitlement to temporary total disability compensation when on appeal from preliminary hearings unless jurisdictional issues are in dispute. As no jurisdictional issues exist in this instance, then K.S.A. 1999 Supp. 44-551 and K.S.A. 1999 Supp. 44-534a dictate that this matter be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the respondent in the above matter should be, and is hereby, dismissed, and the

Order of Administrative Law Judge Bryce D. Benedict dated March 9, 2000, remains in full force and effect.

### IT IS SO ORDERED.

Dated this \_\_\_\_ day of May 2000.

## **BOARD MEMBER**

Roger D. Fincher, Topeka, KS c: Kevin J. Kruse, Overland Park, KS Bryce D. Benedict, Administrative Law Judge

Philip S. Harness, Director